

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THURMAN PAUL as the)
Administrator of the Estate of)
CEDRIC A. PAUL, deceased and)
DONTE GARDNER, individually)
Plaintiff(s),)

vs.)

Evanston Police Officers)
JOHN DOE, JOHN ROE, JOHN POE,)
and JOHN LOE, and the CITY)
OF EVANSTON; Employees of)
Albany Care Center JOHN MOE,)
JOHN KOE, JOHN BOE, and DENNIS)
TOSSI, and ALBANY)
CARE CENTER; JOHN FOE and)
JOHN NOE, and COMED)
TRANSPORT, Inc., an Illinois)
corporation,)

Defendant(s).)

NO:

01C 1925

JUDGE

JUDGE ALESIA

DOCKETED

MAR 21 2001

JURY DEMANDED

MAGISTRATE JUDGE ASHMAN

FILED-EDN
01 MAR 20 PM 2:16

CLERK
U.S. DISTRICT COURT

COMPLAINT

1. The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. 1983 and 1988; 28 U.S.C. 1331 and 1343(3); and the Constitution of the United States, and supplemental jurisdiction under 28 U.S.C. Section 1367.

PARTIES

2. Plaintiff Thurman Paul sues as the Administrator of the Estate of Cedric Paul. Plaintiff Donte Gardner sues on his own behalf. Thurman Paul is the natural brother of Cedric Paul. Donte Gardner is the natural son of Cedric Paul.

3. Cedric Paul was, at the time of his death, a 37 year old African American man, a citizen of the United States and a resident of the City of Evanston.
4. Police Officers John Doe, Roe, Poe, and Loe, whose identities are presently unknown, were employed by the City of Evanston. All defendants were at all times relevant to this Complaint, acting within the scope of their employment and under color of law. All defendants are being sued individually.
5. Defendant City of Evanston is a municipal corporation within the State of Illinois, and was, at all times relevant to this Complaint, the employer of Defendants John Doe, Roe, Poe, and Loe, presently unknown police officers.
6. John Moe, Koe, Boe, whose identities are presently unknown and Administrator Dennis Tossi, were employees of Albany Care Center. At all times relevant to this Complaint, they were acting within the scope of their employment.
7. Defendant Albany Care Center is a corporation within the State of Illinois, and was, at all times relevant to this Complaint, the employer of John Moe, Koe, Boe, and Dennis Tossi.
8. Defendants John Foe and Noe were employees of CoMed Transport. At all times relevant to this Complaint, they were acting within the scope of their employment.
9. Defendant CoMed Transport is a corporation within the State of Illinois, and was, at all times relevant to this Complaint, the employer of John Foe and Noe, presently unknown employees.

FACTS

10. Cedric Paul resided at the mental health care facility, Albany Care Center, in Evanston, Illinois.
11. On July 13, 2000, Mr. Paul bought a radio from another resident for five dollars and later discovered that the radio did not work. Mr. Paul went to Administrator Dennis Tossi for help and Tossi refused.
12. Instead, Tossi summoned his employees John Moe, Koe and Boe and called the Evanston Police Department and CoMed to transport Mr. Paul to the hospital.
13. No one tried to resolve the dispute for Mr. Paul. Officers John Doe, Roe, Poe, and Loe, Paramedics John Foe and Noe, and Albany staff employees John Moe, Koe, and Boe blatantly disregarded the situation and all wrestled Mr. Paul to the ground. Mr. Paul was placed in a choke hold.
14. As a result, Mr. Paul's wind pipe was broken and he was transported to Saint Francis Hospital where he was pronounced dead at 7:20 P.M.

COUNT I

(42 U.S.C. sec. 1983 Excessive Force)

- 1-14. Plaintiff realleges paragraphs 1 through 14 above as though fully set forth herein.
15. The unjustified excessive force used by Evanston Police Officers John Doe, Roe, Poe and Loe was the direct and proximate cause of Plaintiff's death. These acts by

all of the Evanston Police Defendants violated Plaintiff's Fourth Amendment right to be free from unreasonable seizures; and 42 U.S.C. 1983.

WHEREFORE, Plaintiff demands \$1,000,000 in compensatory damages against these Defendants because these Defendants acted maliciously, willfully and/or wantonly, \$50,000 in punitive damages against Defendants, plus costs, attorneys' fee, and such other additional relief as this Court deems equitable and just.

COUNT II
(42 U.S.C. Section 1983 Conspiracy)

1-14. Plaintiff realleges paragraphs 1 through 14 above as though fully set forth herein.

15. Defendant Dennis Tossi summoned employees John Moe, Koe and Boe to determine how to handle situation. Tossi and the employees decided to call CoMed to transport Mr. Paul to the hospital for a psychiatric evaluation. The Evanston Police were also called to intervene in the matter.

16. Defendant Officers John Doe, Roe, Poe and Loe, Comed Transport employees John Foe and Noe, and Albany Care employees John Moe, Koe, Boe and Dennis Tossi reached an understanding and agreement that Mr. Paul should be restrained and transported to the hospital.

17. Defendant Officers John Doe, Roe, Poe and Loe and CoMed Transport employees John Foe and Noe forced Mr. Paul

into a choke hold and crushed his windpipe. The defendants course of conduct caused Mr. Paul's death.

18. Each defendant did reach this understanding and agreement, and did engage in this course of conduct with the mutual purpose, objective, and knowledge that it would deprive Cedric Paul of his rights, privileges and immunities, as guaranteed by the Constitution and laws of the United States.
19. Additionally, said conspiracy/joint action violated Cedric Paul's Fourth Amendment rights, under color of law, in violation of 42 U.S.C. Section 1983, and was a direct and proximate cause of his death.
20. Acting in furtherance of this plan and conspiracy, all of the Defendants committed overt acts, including, but not limited to the unjustifiable seizure as more fully alleged in paragraphs 1-14. This course of conduct by the Defendants was done willfully, maliciously, intentionally, or with reckless disregard, and directly and proximately caused the death of Cedric Paul.

WHEREFORE, the Plaintiff demands \$1,000,000 in compensatory damages against all Defendants, and because all Defendants acted maliciously, willfully and/or wantonly, \$35,000 in punitive damages, plus costs, attorney fees, and such other additional relief as this Court deems equitable and just.

COUNT III

(42 U.S.C.1983 - Donte Gardner's Loss of Society)

1-14. Plaintiff realleges paragraphs 1 through 14 as though fully set forth herein.

15. The acts of defendants, as alleged above, and the resultant death of his father, Cedric Paul, violated and deprived the Fourteenth Amendment right and liberty interest of Donte Gardner in the continued society and companionship of his father.

16. Defendants' acts were the direct and proximate cause of the injuries suffered by the Plaintiff.

WHEREFORE, the Plaintiff, seeks \$100,000 in compensatory damages against the Defendants to be compensated for injuries caused by their willful, wantonly, and unconstitutional acts; \$50,000 in punitive damages against each Defendant; attorney's fees and costs; and any additional relief this Court deems just and equitable.

COUNT IV

(Liability of Albany Care Center Under

Doctrine of Negligent Undertaking to Render Services)

1-14. Plaintiff realleges paragraphs 1 through 14 as though fully set forth herein.

15. Defendant Albany Care Center undertook, for consideration, the duty to render services of convalescent care to Cedric Paul.

16. In rendering these services, Albany Care Center employees John Moe, Koe and Boe and Administrator Dennis Tossi failed to exercise reasonable care as necessary for the protection of Cedric Paul.

17. The failure of the Albany Care employees to exercise reasonable care increased the risk of harm to Cedric Paul.

18. Cedric Paul suffered harm because he relied on the duty of Albany Care Center to exercise reasonable care in the rendering of services.

WHEREFORE, Plaintiff Donte Gardner demands compensatory damages in excess of \$50,000 against the defendants, the costs of this action, and such other relief as this court deems just and equitable.

COUNT V

(Liability of Comed Under

Doctrine of Negligent Undertaking to Render Services)

1-14. Plaintiff realleges paragraphs 1 through 14 as though fully set forth herein.

15. Defendant Comed voluntarily undertook the duty to render services of medical transport for Cedric Paul.

16. In rendering these services, unknown Comed John Foe and John Noe failed to exercise reasonable care as necessary for the protection of Cedric Paul.

17. The failure of the Comed employees to exercise reasonable care increased the risk of harm to Cedric Paul.

18. Cedric Paul suffered harm because he relied on the duty of Comed to exercise reasonable care in the rendering of services.

WHEREFORE, Plaintiff Donte Gardner demands compensatory damages in excess of \$50,000 against the defendants, the costs of this action, and such other relief as this court deems just and equitable.

COUNT VI

(Wrongful Death Claim Under Illinois Law Against Defendants)

1-14. Plaintiffs allege and reallege paragraphs 1

through 14 as though fully set forth herein.

15. Decedent was and is survived by one Adult son.

16. Decedent Cedric Paul was officially pronounced dead on July 13, 2000 at Saint Francis Hospital in Evanston, Illinois.

17. Donte Gardner, beneficiary and next of kin of Cedric Paul, exercised due care at all times material to this complaint.

18. The wrongful death due to the negligent misconduct of the Defendants, proximately caused the injury and death of Decedent Cedric Paul, in violation of Ill. Rev. Stat. Ch.70, Sec. 1,2.

19. Each and every next of kin, as named in or referred to in paragraph 19 has lost and will continue to lose pecuniary support as a proximate result of the wrongful death of Cedric Paul.

WHEREFORE, Plaintiff Donte Gardner demands compensatory damages in excess of \$50,000 against the defendants, the costs of this action, and such other relief as this court deems just and equitable.

COUNT VII

(State Claim for Respondeat Superior)

1-14. Plaintiff realleges paragraph 1 through 14 as though fully set forth herein.

15. The City of Evanston, was at all times relevant to the Plaintiff's claim, the employer of presently unknown police officers, who were acting within the scope of

their employment as Evanston Police Officers when they used excessive force against the Plaintiff.

16. The Defendant City of Evanston as principal is liable for the actions of its agents under the doctrine of Respondeat Superior.

WHEREFORE, the Plaintiff demands \$100,000 in actual and compensatory damages against the defendant City of Evanston, the costs of this action, and such other relief as this Court deems just and equitable.

COUNT VIII

(Respondeat Superior Claim CoMed Transport)

- 1-14. Plaintiff realleges paragraph 1 through 14 as though fully set forth herein.
15. CoMed Transport, was at all times relevant to the Plaintiff's claim, the employer of presently unknown employees, John Foe and John Noe, who were acting within the scope of their employment as CoMed Paramedics when they provided negligent assistance to Mr. Paul.
16. The Defendant CoMed Transport as principal is liable for the actions of its agents under the doctrine of respondeat superior.

WHEREFORE, the Plaintiff demands \$100,000 in actual and compensatory damages against the defendant CoMed Transport, the costs of this action, and such other relief as this Court deems just and equitable.

COUNT IX

(Respondeat Superior Claim for Albany Care Center)

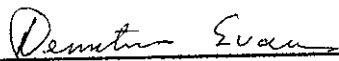
- 1-14. Plaintiff realleges paragraph 1 through 14 as though fully set forth herein.

15. Albany Care Center, was at all times relevant to the Plaintiff's claim, the employer of presently unknown employees, John Moe, John Koe, John Boe and Dennis Tossi, who were acting within the scope of their employment as Albany Care employees when they negligently failed to intervene in the situation.
 16. The Defendant Albany Care Center as principal is liable for the actions of its agents under the doctrine of respondeat superior because employees John Moe, John Koe, John Boe and Dennis Tossi failed to reasonably mediate Mr. Paul's problem with another resident.
- WHEREFORE, the Plaintiff demands \$100,000 in actual and compensatory damages against the defendant Albany Care Center, the costs of this action, and such other relief as this Court deems just and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS

Dated: *March 20, 2001*

Respectfully Submitted.


Demitrus Evans
Attorney for Plaintiff

Law Office of Standish E. Willis
407 S. Dearborn
Suite 1395
Chicago, Illinois 60605
312-554-0005

JS 44
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Thurman Paul, **JUDGE ALESIA** as the
Administrator of the Estate of Cedric
A. Paul, deceased and Donte Gardner,
individually

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook
(EXCEPT IN U.S. PLAINTIFF CASES)

MAGISTRATE JUDGE ASHMAN

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Office of Standish E. Willis
407 S. Dearborn #1395
Chicago, IL 60605 312-554-0005

DEFENDANTS

Officer John Doe, Roe, Poe and Loe;
City of Evanston, Albany Care Center,
Comed Transport

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

MAR 21 2001

FILED-ED
MAR 20 PM 3:16CLERK COURT
U.S. DISTRICT COURT**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|
| PTF | DEF | | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Incorporated or Principal Place of Business in This State | | |
| | | Incorporated and Principal Place of Business in Another State | | |
| | | Foreign Nation | | |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 U.S.C. Section 1983 Civil Rights Cause of Action

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ YES ☐ NO**VIII. This case**☒ is not a refiling of a previously dismissed action.☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE

3-20-01

SIGNATURE OF ATTORNEY OF RECORD

Standish E. Willis

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

Thurman Paul, as the Administrator of the **JUDGE ALESIA**
Estate of Cedric A. Paul, deceased and Donte Gardner, individually
v. **MAGISTRATE JUDGE ASHMA**

Case Number:

Officer John Doe, Roe, Poe and Loe, City of
Evanston, Albany Care Center, and Comed Transport

01C 1925

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

THURMAN PAUL, as the Administrator of the Estate of Cedric A. Paul,
deceased and DONTÉ GARDNER individually

DOCKETED

MAR 21 2001

FILED-ED5

01 MAR 20 PM 2 16

**CLERK
U.S. DISTRICT COURT**

(A)	(B)
SIGNATURE <i>Demetrius Evans</i>	SIGNATURE <i>Standish E. Willis</i>
NAME Demetrius Evans	NAME Standish E. Willis
FIRM Law Office of Standish E. Willis	FIRM Law Office of Standish E. Willis
STREET ADDRESS 407 S. Dearborn #1395	STREET ADDRESS 407 S. Dearborn #1395
CITY/STATE/ZIP Chicago, IL 60605	CITY/STATE/ZIP Chicago, IL 60605
TELEPHONE NUMBER 312-554-0005	TELEPHONE NUMBER 312-554-0005
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>